IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.233 OF 2005

Shri C.R.Dalvi ..Petitioner.

V/s.

Additional Municipal Commissioner
"D" Ward, Mumbai & Anr. ..Respondents.

Mr.Rohit Pawaskar for petitioner.

Mr.A.Y.Sakhare, Sr.Advocate with Mr.Malandkar for BMC.

Mr.A.H.Palekar, AGP for Respondent No.2.

CORAM: A.M.KHANWILKAR,J
DATE : MARCH 22, 2006.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. The Petitioner, an advocate of good standing practising before this court, had filed Public Interest Writ Petition before this court being W.P. NO.2323 of 1985, seeking direction in respect of the user of August Kranti Maidan in Mumbai and for restraining the authorities to accord permission for user, thereof, save and except the designated use as specified in the proposed development plan. The said Writ Petition was allowed by this court on 4th April, 1986 in which following directions were passed.

12. Directions to the Municipal Corporation of Greater Bombay regarding the use of playgrounds under the current and proposed Development Plans:-

(A) Playgrounds not listed in the Second Annexure to the Municipal Corporation's Circular No.MDB/8480 dated 10th April 1981 shall at all times be reserved exclusively for the play of children and similar individual recreational activities. No part of these playgrounds shall be hired out for any purpose or be allowed to be used for any other purpose.

(B.1) Playgrounds listed in the aforesaid annexure having a square area of 5000 sq.meters or less shall at all times be reserved exclusively for the play of children and similar individual recreational activities. No part of these playgrounds shall be hired out or be allowed to be used for any purpose other than sports or physical training.

2(a) Half the square area of playgrounds listed in the aforesaid annexure having an area of more than 5000 sq.meters shall at all times be reserved exclusively for the play of children and similar individual recreational activities. No part of this area of these playgrounds shall be hired out or be allowed to be used for any purpose other than sports or physical training.

(b) The Municipal Corporation may give on hire the balance of these playgrounds for the purposes set out in the aforesaid annexure but not for the purpose of circuses, film shootings or jatras(fairs).

(c) Such hire or use as is permissible under sub-clause (b) shall be for a period not exceeding one day.

(d) For functions organised on the occasions of Independence Day, Republic Day, Maharashtra Day and similar National events, and the Jayantis or Punyatithis of national leaders, the Corporation may given on hire or allow to be used the entire areas of all

> playgrounds listed in the aforesaid, including those having an area of 5000 sq.meters or less.
>
> 13. Rule accordingly. No order as to costs. (emphasis supplied)

3. The authorities were directed to limit the scope of user of said August Kranti Maidan as has been earmarked under the aforesaid order. Consequently, amendment to the provisions of Maharashtra Regional and Town Planning Act, 1966 were brought into effect by issuance of ordinance in 1997 which, later on, was incorporated as section 37A of the Act of 1966. The said amended provision reads thus:

> "37-A.Notwithstanding the thing contained in this Act or any other law for the time being in force or in any judgment, order or direction of any Court, or any draft or final Development plan. The State Government or the Planning Authority may, in respect of any plot of land reserved, designated or allocated for the purpose of play-ground in such draft or final Development plan. which is in the possession of the State Government or the Planning Authority. by an order issued from time to time, permit any organisation, body of persons or association to use such play ground <u>for functions organised on the occasions of Independence Day, Republic Day, Maharashtra Day and similar National events, and the Jayanties and Punnyatithies of National Leaders, and religious functions</u>, on terms and conditions specified by the State Government or the Planning Authority, as the case may be, in such order, for a period not exceeding 12 days at a time and in any case not exceeding

> 30 days in the aggregate, in a calender year; and such use shall not be deemed to be a change of user." (emphasis supplied)

The abovesaid amendment is more or less consistent with the directions given by this court except to the extent that one more category is inserted for user of the specified land(play ground) for "religious functions". Besides, the outer limit has been provided by way of this amendment for a period not exceeding 12 days at a time and in any case not exceeding 30 days in aggregate in a calender year and such specified use shall not be deemed to be a change of user.

4. The grievance of the petitioner before this court in the present contempt petition is that, inspite of clear direction in the order passed by this court referred to above and also the amended section 37 A of the Act, 1966, the authorities have continued to hire or let out August Kranti Maidan for purposes other than specified user, which amounts to wilful defiance and disobedience of the order of the court amounting to contempt of court.

5. Initially, only two respondents were named in this petition, namely, present incumbent Additional

Municipal Commissioner and State of Maharashtra. However, during the hearing of this petition, it transpired that August Kranti Maidan has since been declared as a "Monument" and is under the control of Director of Heritage and Museum, State of Maharashtra. Accordingly, the said authority was allowed to be impleaded as respondent No.3.

6. On going through the affidavits filed before this court, there is substance in the grievance made by the petitioner that inspite of clear directions contained in the order dated 4th April, 1986 in Writ Petition No.2323 of 1985 which has been reiterated in the amendment of section 37A of the Act, the authorities in the past have been letting out August Kranti Maidan for purposes other than the specified user. Specific instances in that behalf have been placed on record. Indeed, the authorities have made some attempt to explain the relevant events. However, in my opinion, it is not necessary to elaborate the details of such infractions, as during the course of argument it is noted that the whole controversy can be put at rest if one authority from the State Government and one from the Mumbai Municipal Corporation, which is the planning authority, were to be identified as "the authorities"

to accord future permissions so that the said authorities can be made accountable for any breach in future.

7. The learned AGP appearing for the State Government submits that permission in relation to the user of August Kranti Maidan is presently granted by the Social Justice Cultural Affairs and Special Assistance Department, as per the Government Business Rules. If it is so, the Secretary of the said department will be responsible to accord all future permissions to be granted by the State Government for the user of August Kranti Maidan. It is made clear that in future any permission for user of August Kranti Maidan consistent with the mandate of Section 37A, will be valid only if it is given under the signature of Secretary of Social Justice Cultural Affairs and Special Assistance Department, State of Maharashtra.

8. In so far as Mumbai Municipal Corporation which is the Planning Authority, in terms of section 37A is also competent to grant permission for the specified user. To obviate any possibility of deviation in future, it was felt necessary to identify the officer of the Corporation who can be

made responsible for future permissions to be granted for the user of August Kranti Maidan for specified purposes in Section 37A of the Act. Mr.Sakhare for the Corporation states that such permission is granted by the Deputy Municipal Commissioner,Zone-I, within whose area August Kranti Maidan is situated. In the circumstances, it is directed that all future permissions regarding user of August Kranti Maidan to be granted by the Mumbai Municipal Corporation shall be under the signature of Deputy Municipal Commissioner Zone-I.

9. It is made clear that the above said two authorities who will be responsible for grant of all future permissions for user of August Kranti Maidan will be guided by the directions given by this court in Writ Petition No.2323 of 1984 dated 4th April, 1986 read with Section 37A of the Maharashtra Regional Town Planning Act, 1966. To wit, the specified use have been mentioned in section 37A of the Act as occasions of Independence Day, Republic Day, Maharashtra Day and similar National events and Jayanties and Punnyatithies of National leaders and religious functions. Indeed, the expression "religious function" has not been defined in the Act. The authorities shall therefore, act with

circumspection, so that no controversy is created in future regarding the grant of any permission.

10. With this observation the petition is disposed of with liberty to the petitioner to take recourse to appropriate remedy, if so advised with regard to the grievance about the wrongful inclusion of user for "religious functions". That grievance will be considered on its own merits.